

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1996 SESSION

FILED
July 17, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

V.

**WILLIAM ALLEN,
A/K/A MARK ALLEN,**

Appellant.

)
) C.C.A. No. 03C01-9506-CR-00175
)
) Blount County
)
) Hon. D. Kelly Thomas, Jr., Judge
)
) (Sentencing)
)
)
)

FOR THE APPELLANT:

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District Public Defender
(On Appeal)

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(Plea Submission)

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, William Allen, pled guilty to two counts of sale of cocaine over one-half gram, a Class B felony. The trial judge sentenced him as a Range I offender and imposed concurrent nine-year sentences. In this appeal, he argues that the trial court erred in failing to place him in community corrections. We disagree.

Upon a de novo review with a presumption of correctness, we find that the record reflects the trial court's due consideration to the sentencing principles set forth in the 1989 Act, including the eligibility criteria for community corrections as set forth in Tenn. Code Ann. § 40-36-106 (1990). While acknowledging the existence of some mitigating evidence, the trial court concluded that certain considerations militated against alternative sentencing. Quoting Tenn. Code Ann. § 40-35-103(1)(A) - (C), the trial judge found supporting evidence and concluded that:

Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct¹... Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses² or measures less restrictive than confinement have frequently or recently been applied unsuccessfully.

Notwithstanding the state's concession that the trial court errantly considered the need for general deterrence, we find no error of law mandating reversal. The sentence imposed by the trial court is, therefore, affirmed in accordance with Tenn. R. Ct. Crim. App. 20.

¹The presentence report illustrates the appellant's extensive history of criminal behavior.

²The state conceded that "general deterrence" was not a proper consideration and should carry no weight in determining appellant's eligibility for alternative sentencing.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

GARY R. WADE, Judge